No. 07-6159

2007

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In The

Supreme Court of the United States

TREVOR JAMES PATTERSON, II,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

On Petition For Writ Of Certiorari
To The California Court Of Appeal
First Appellate District, Division One

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Was petitioner's Fourth Amendment right to freedom from unreasonable searches violated when a law enforcement officer, without a search warrant or exigent circumstances, and shortly after 3:30 a.m., crouched down to look through a two-inch space between drawn blinds and the bottom of the front window of an apartment in which petitioner was an overnight guest?

II. Did a "knock and talk" conducted by a second law enforcement officer become a warrantless seizure of the occupants of the subject apartment due to the officer's five or six minutes of continuous knocking on the front door while requesting entry and announcing his official capacity?

PARTIES TO THE PROCEEDING

The parties to the proceeding are

THE STATE OF CALIFORNIA;

TREVOR JAMES PATTERSON, II, an individual.

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OPNIONS BELOW

Discretionary review of the judgment of the California Court of Appeal in the within case, A-1 to A-20, was denied by the California Supreme Court on February 28, 2007, and entered on that same date. A-21. Under this Court's Rule 13, a petition for certiorari filed on or before May 29, 2007 is timely filed.

BASIS FOR SUPREME COURT JURISDICTION

This court has jurisdiction under 28 U.S.C. § 1257(a) to review the decision of a California court of appeal with respect to a federal constitutional question where the California Supreme Court has denied review. *Cohen v. California,* 403 U.S. 15, 17-18, 91 S.Ct. 1780, 29 L.Ed.2d 284 (1971) This petition concerns affirmance by the Court of Appeal of the denial by the California Superior Court of a motion to suppress evidence obtained in violation of the Fourth Amendment of the United States Constitution.

CONSTITUTIONAL PROVISION INVOLVED

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

– U.S. Constitution, Amendment IV

STATEMENT OF THE CASE

At approximately 3:30 a.m. on May 15, 2001, Contra Costa County Sheriff's deputies received a dispatch reporting that a Hispanic male had come out of a lower apartment of a multi-unit apartment building, shot two times in the air with a handgun, and was seen to go back into an unspecified lower unit. App. 24, 27. Deputies Goldberg, Simpson and Deputy Sergeant Gorton met at the building. App. 2. Only one lower apartment, no. 3, had lights on. App. 2, 27.

On approaching that apartment, Deputy Goldberg got on her hands and knees and was able to see inside by looking through a one- to two-inch space between the drawn Levolor blinds and the bottom of a window facing the parking lot two feet from the front door. She saw glassware, people moving around, and a chemical container. Goldberg reported this to Gorton and Simpson. App. 25, 27-28. Simpson knocked on the door. The deputies announced their presence as sheriff's deputies and requested that someone come to the door. App. 29. This elicited no response from the occupants, App. 30, and Simpson went around to the back of the building to see if he could get someone to respond at the back door. App. 26. Gorton commenced knocking on the door and announcing his official presence, doing so continuously for five or six minutes. App. 26, 30. No announcement was ever made as to why the deputies were present. App. 29.

Finally, Randy Barrett, whose apartment it was, opened the front door. The way inside was barred by a security screen, which Barrett refused to open, telling the deputies that he wasn't letting anyone enter without a search warrant. At this point, Gorton smelled odors that

were consistent with methamphetamine manufacture and insisted that the deputies be given access. Barrett continued to refuse entry until a woman, Corrine Smith, opened the security screen and let the deputies into the apartment. App. 2, 3.

Petitioner was an overnight guest in the apartment and was detained while a search warrant was issued based upon the deputies' observations. In the meantime, and pursuant to the search warrant, evidence was obtained against petitioner leading to his conviction of methamphetamine manufacture and related offenses. App. 1, 3.

Petitioner brought a motion to suppress that evidence prior to trial for those offenses. App. 22. Following adduction of the foregoing evidence[1] and petitioner's testimony on the subject, the trial court concluded that he had standing to bring the motion because he was Barrett's overnight guest. The trial court also acknowledged that a warrantless search could not have been based solely on the initial report of shots fired. The court further concluded, on the other hand, that the deputies did not violate the Fourth Amendment because Smith voluntarily consented

[1] It should be noted that the Court of Appeal's opinion cites several facts purportedly relevant to the motion to suppress which were not presented during that motion but may have been presented at trial, particularly concerning Deputy Goldberg's observations while crouched at the window of the apartment. The only law enforcement officer present on the scene testifying at the motion to suppress was Deputy Sergeant Gorton. His testimony concerning the information Deputy Goldberg gave him while she was crouched at the apartment window is excerpted as part of the Appendix from the suppression hearing transcript, among other pertinent differences between the court of appeal's recitation of the facts and those actually developed at the suppression hearing.

to their entry and they had an objectively reasonable belief that she had authority to give consent. App. 4.

The trial court also determined that the deputies did not engage in any impermissible conduct prior to entry, finding that the deputies had a right to be in the area making inquiries in the first place. Deputy Goldberg's observations through the window were proper because they were made from a vantage point where she had a right to be. With respect to the five to seven minutes that passed before Barrett opened the inner apartment door, the court found that the officers waited a reasonable amount of time in obtaining a voluntary consent. It was indicated that the entry was justified by exigent circumstances coming to light through Goldberg's observations through the window and the deputies' concerns about a potential chemical explosion. Hence the motion to suppress was denied. App. 4-5.

On appeal, it was argued that the denial of the suppression motion was error. Petitioner contended that Barrett's opening of the front or inner door of the apartment was involuntary, made in response to Gorton's repeated demands and continuous knocking, and that, until the door was opened, the deputies were unaware of any circumstances excusing compliance with the warrant requirement. Petitioner also contended that Deputy Goldberg invaded the occupant's reasonable expectation of privacy by crouching down to look through the apartment window beneath the blinds. App. 5.

The Court of Appeal rejected both contentions, upholding the search and affirming the trial court's denial of the suppression motion. In so doing, the court of appeal purported to distinguish the present case on the involuntary

detention question from the decision of the Seventh Circuit in *United States v. Jerez,* 108 F.3d 684 (7th Cir. 1997), dealing with a similar situation by finding an involuntary detention and suppressing the evidence thereafter obtained. As for the invasion of privacy question, the Court of Appeal departed from decisions of its own higher court and those of other state courts of last resort suppressing evidence obtained under similar facts. App. 5-9. Once the front door was opened, the court found, the smells associated with methamphetamine manufacture and the danger of explosion presented exigent circumstances justifying entry. App. 9-11. The court did not pass on the issue of whether Smith's consent to entry validated the search. App. 11.

Petitioner's timely filed petition for review by the California Supreme Court of the Court of Appeal's decision on the Fourth Amendment issues raised below, among others, was denied. App. 21.

ARGUMENT

Introduction

Petitioner recognizes that the Court, in deciding whether to grant certiorari in cases such as this, looks for reasons satisfying Supreme Court Rule 10(c), which provides that "a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Petitioner will show that both reasons are indisputably present with respect to each question presented.

I. THIS COURT SHOULD DECIDE WHETHER PETITIONER'S FOURTH AMENDMENT RIGHT TO FREEDOM FROM UNREASONABLE SEARCHES WAS VIOLATED WHEN A LAW ENFORCEMENT OFFICER, WITHOUT A SEARCH WARRANT OR EXIGENT CIRCUMSTANCES, AND SHORTLY AFTER 3:30 A.M., CROUCHED DOWN TO LOOK THROUGH A TWO-INCH SPACE BETWEEN DRAWN BLINDS AND THE BOTTOM OF THE FRONT WINDOW OF AN APARTMENT IN WHICH PETITIONER WAS AN OVERNIGHT GUEST.

A. The First Question in This Case is one of Exceptional Importance not Settled By this Court, as it Concerns Privacy in the Home, the Sanctity of Which is a Foremost Consideration of the Fourth Amendment, Requiring this Court's Establishment of Clear and Specific Guidelines for Law Enforcement Activity Based on the Occupant's Reasonable Expectation of Privacy as Affected by the Plain View Doctrine.

Turning to the first question presented, it appears that this Court has not resolved whether, absent a search warrant or exigent circumstances, a law enforcement officer's getting down on hands and knees late at night and peering into a residence through a two-inch gap in the bottom of drawn front window blinds constitutes a violation of the resident's Fourth Amendment right to be free of unreasonable searches. One reason this question is important stems from this Court's prior decisions emphasizing that residential privacy is an, if not the uppermost, explicit protection afforded by the Fourth Amendment. See, e.g., *United States v. Karo,* 468 U.S. 705, 714, 104 S.Ct. 3296, 82 L.Ed.2d 530 (1984); and gen., *Payton v. New York,*

445 U.S. 473, 63 L.Ed.2d 639, 100 S.Ct. 1371 (1980). "At the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion." *Silverman v. United States*, 365 U.S. 505, 511, 81 S.Ct. 679, 5 L.Ed.2d 734, 97 A.L.R.2d 1277 (1961).

This question also intimately involves the Court's decisions emphasizing that a Fourth Amendment search is defined primarily as an intrusion into an area over which the citizen has exhibited a reasonable expectation of privacy that society is prepared to recognize as such. *Kyllo v. United States,* 533 U.S. 27, 33, 121 S.Ct. 2038, 150 L.Ed.2d 94 (2001) (thermal imaging case); *Bond v. United States,* 529 U.S. 334, 338, 120 S.Ct. 1462, 146 L.Ed.2d 365 (2000), citing *Smith v. Maryland*, 442 U.S. 735, 740, 61 L.Ed.2d 220, 99 S.Ct. 2577 (1979); see also *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). "At the risk of belaboring the obvious, private residences are places in which the individual normally expects privacy free of governmental intrusion not authorized by a warrant, and that expectation is plainly one that society is prepared to recognize as justifiable." *Karo, supra,* 468 U.S. at 714. The importance of that expectation requires this Court's close attention. As stated in the thermal imaging case, "We have said that the Fourth Amendment draws 'a firm line at the entrance to the house,' *Payton,* 445 U.S. at 590. That line, we think, must be not only firm but also bright – which requires clear specification of those methods of surveillance that require a warrant." *Kyllo, supra*, 533 U.S. at 40.

The question raised by Deputy Goldberg's observations while on her hands and knees peering through a small gap between drawn blinds and the bottom of the

apartment window also trenches upon this Court's decisions concerning plain view. "Under [the plain view] doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." *Minnesota v. Dickerson*, 508 U.S. 366, 375, 113 S.Ct. 2130, 124 L.Ed.2d 334 (1993), citing *Horton v. California,* 496 U.S. 128, 136-137, 110 L.Ed.2d 112, 110 S.Ct. 2301 (1990) and *Texas v. Brown,* 460 U.S. 730, 739, 75 L.Ed.2d 502, 103 S.Ct. 1535 (1983) (plurality opinion). In *Texas v. Brown, supra,* this Court held it "irrelevant" that the officer's view of objects related to a heroin balloon through a car window by means of a flashlight was aided by the officer's leaning forward and contorting himself, due to the fact that any curious passerby could do the same. *Id.* at 740. The California Court of Appeal herein expands this holding to legitimize kneeling down and peeking through the bottom of blinds covering residence windows that face the street. Unlike peering through the windows of a vehicle on the street, however, peeking through the windows of an inhabited building without lawful business with the occupant is a misdemeanor under State law. Cal. Penal Code § 647(i). Consequently, it is indisputable that drawing the window blinds of a residence to bar a direct, uncontorted view of the interior in the middle of the night exhibits a reasonable expectation of privacy which society has recognized. Because residential privacy is involved, furthermore, this Court's plain view holdings require "clear specification" in this area, *Kyllo, supra,* 533 U.S. at 40, so that law enforcement in

the Union's largest State will discontinue violating that expectation.[2]

B. The State Court of Appeal Decided the Important Question Raised by Deputy Goldberg's Warrantless Search in a Manner that Severely Conflicts with this Court's Decisions.

Besides being a matter of continuing importance, the decision of the Court of Appeal in regards to Deputy Goldberg's activities conflicts severely with established decisions of this court that prohibit visual invasion of the structure of the home absent a warrant or exigent circumstances. "In the home, our cases show, *all* details are intimate details, because the entire area is held safe from prying government eyes." *Kyllo, supra,* 533 U.S. at 37-38, citing *Karo, supra* and *Arizona v. Hicks*, 480 U.S. 321, 94 L.Ed.2d 347, 107 S.Ct. 1149 (1987). The government eyes were certainly prying in this case, and the court of appeal failed to hold the apartment in which appellant was an overnight guest free from them.

In *Hicks,* the officers were lawfully present in the apartment pursuant to exigent circumstances – a shot fired from that apartment injured a person in the apartment

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[2] E.g., does "lawfully in a position to view an object" include or exclude Deputy Goldberg's activity? The Washington Supreme Court observed that "courts have overwhelmingly found that an attempt to block a view through a window shows a reasonable expectation of privacy." *State v. Cardenas,* 146 Wn.2d 400, 47 P.3d 127, 132 (2000), citing authorities; see also *State v. Morris,* 27 Kan.App.2d 155, 999 P.2d 283, 285 (2000) (officer's action nearly identical to that of Deputy Goldberg's in the present case held a violation of privacy and an illegal search), cited in *Cardenas, op. cit.*

below – and were looking for the shooter and for weapons. One of the searching officers felt that expensive stereo equipment looked out of place in the apartment, so the officer moved some of the equipment to record the serial numbers. Since those serial numbers corresponded with equipment taken in an armed robbery, the officer seized the equipment. This Court affirmed holdings by the Arizona courts suppressing that evidence, as moving the equipment to view the serial numbers was a search independent of the search justified by the exigent circumstances validating the officer's entry. In so doing, the Court firmly rejected any extension of the "plain view" doctrine, observing that "probable cause to believe the equipment was stolen was required" for that doctrine to legitimize that search. *Hicks, supra,* 480 U.S. at 326-328.

Here, as the trial court found, there were no exigent circumstances present at the time Deputy Goldberg got down on her hands and knees and peered through a two-inch space between the blinds and the bottom of the window.[3] Thus, extension of the plain view concept to the

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[3] The Court of Appeal disagrees with this assessment, stating in effect that a report of gunshots being fired is a factor tending to legitimize Goldberg's activities, citing dicta from *People v. Camacho,* 23 Cal.4th 824, 836 (2000). App. 8-9. However, a close look at *Camacho* discloses that the California high court was referring to the situation where the police were directed towards a particular residence rather than towards a general area, such as an apartment complex. *Ibid.* Here also, the report was that two shots were fired into the air outside at a time when no one else was likely to be around – which was the case when the deputies arrived on scene – clearly a situation distinguishable from that involved in *Hicks,* and the source of information prompting the dispatch was not established. cf. *Florida v. J.L.,* 529 U.S. 266, 146 L.Ed.2d 2d 254, 120 S.Ct. 1375 (2000). It is thus submitted that the trial court's finding "that a warrantless search could not have been based solely on the initial report of shots fired," App. 4, is correct.

search conducted by Deputy Goldberg conflicts with both *Kyllo* and *Hicks*.

II. THIS COURT SHOULD DECIDE WHETHER, DURING THE ABOVE INCIDENT, A "KNOCK AND TALK" CONDUCTED BY A SECOND LAW ENFORCEMENT OFFICER BECAME A WARRANTLESS SEIZURE OF THE OCCUPANTS OF THE SUBJECT APARTMENT DUE TO THE OFFICER'S FIVE OR SIX MINUTES OF CONTINUOUS KNOCKING ON THE FRONT DOOR WHILE REQUESTING ENTRY AND ANNOUNCING HIS OFFICIAL CAPACITY.

A. As it has not Previously Done So, it is of Exceptional Importance that this Court Specifically Settle the Acceptable Parameters of the "Knock and Talk" Technique in Use by Law Enforcement, Particularly as a Tool to Avoid Compliance with the Fourth Amendment's Warrant Requirement, and the Facts of this Case Present an Excellent Opportunity for Doing So.

The second question presented, whether a law enforcement officer's knocking at the front door of a residence, announcing his capacity and "requesting" that the door be opened for a continuous period of five to six minutes at half past three in the morning, constitutes a seizure of the occupants, again has not been directly decided by this Court. The question is important since it brings into play the parameters of the increasingly common law enforcement technique known as "knock and talk."

It appears established that officers, utilizing normal means of ingress, may approach a residence for a legitimate purpose, such as to make inquiries of the occupants, and once the front door is opened, it generally is not a Fourth Amendment violation to see, hear, or smell from that vantage point what is happening inside the dwelling. This rule has led to the widespread use of the "knock and talk" technique, whereby law enforcement officers knock on the door and, when the door is opened, ask the resident for permission to enter and to search the premises; also, when the door is opened, the officers may see objects or smell odors giving them probable cause as well as an exigency calling for immediate entry. This technique oftentimes avoids the necessity of obtaining a search warrant based on probable cause in order to search a dwelling. 1 La Fave, Search and Seizure, § 2.3(c), Protected Areas and Interests: Residential Premises, pp. 575-578 (4th ed. 2004).

The courts have endorsed employment of the "knock and talk" technique if there is a "voluntary response to the officer's knock at the front door." (*Id.*, at p. 577, n. 98, citing *United States v. Cephas,* 254 F.3d 488 (4th Cir. 2001) and other cases.) However, if the door is opened in response to a police command or incessant and persistent knocking for a number of minutes accompanied by requests that the door be opened, there is no voluntary opening of the door; rather, numerous courts have held that the occupants within have been illegally seized since such police activity indicates they cannot ignore the police encounter and go about their business. 1 La Fave, *supra,* at 577, n. 98, citing, inter alia, *United States v. Conner,* 127 F.3d 663 (8th Cir. 1997), *Bailey v. Newland,* 263 F.3d 1022 (9th Cir. 2001), *Commonwealth v. Hamilton,* 508

N.E.2d 870, 24 Mass.App.Ct. 290 (1987), *United States v. Winsor*, 846 F.2d 1569 (9th Cir. 1988) and *United States v. Jerez, supra,* 108 F.3d at 690-692 (late-night "knock and talk," voluntariness in opening door depends on whether occupant felt free to ignore police requests to open door and go about business within, and where the officers roused the defendants from their beds in a motel in the middle of the night by knocking on the door for three minutes, shined a flashlight through the window, and requested that they open the door, the defendants were "seized" as a reasonable person in their situation would not have felt free to ignore the deputies and continue about their business); see also *United States v. Thomas,* 430 F.3d 274, 276-278 (6th Cir. 2005) (discussing voluntariness aspects of "knock and talk" technique); *Fontenot v. Cormier,* 56 F.3d 669, 675 (5th Cir. 1995) (demand by officers that door be opened late at night coercive, evidence obtained after entry suppressed); *State v. Scott,* 126 P.3d 567 (Ct.App.NM 2005) same; evidence suppressed because late-night knock and talk coercive).

The foregoing authorities are but a representative sample set out to demonstrate that the "knock and talk" technique is one that is subject to widespread abuse by law enforcement. See also cases cited *United States v. Thomas, supra,* 430 F.3d at 278. The technique, furthermore, is one that directly involves residential privacy, a foremost concern of the Fourth Amendment. That concern requires a definite guideline as to when a knock and talk becomes coercive and thus constitutes a seizure under the Fourth Amendment. Because the present case involves facts that are not as aggravated and hence obviously coercive as some of the cases cited in *Thomas, id.,* this

Court can utilize petitioner's situation to establish that definite guideline.

Hence, again, the Court's pronouncement in *Kyllo* that the propriety of police search and seizure activities involving the home requires "clear specification" by the Court makes the "knock and talk" issue in this case one of extreme importance.

B. The Court Of Appeal's Resolution of this Important Question Conflicts with Several of this Court's Relevant and Prominent Decisions.

Furthermore, the court of appeal's decision as to this important question clearly conflicts with relevant decisions of this Court establishing when a seizure occurs. As established by the Court's seminal case, *Terry v. Ohio,* 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), a seizure occurs "whenever a police officer accosts an individual and restrains his freedom to walk away." *Id.,* 392 U.S. at 16. This restraint criteria has developed to where a seizure occurs if a person confronted "could reasonably have believed that he was not free to disregard the police presence and go about his business." *Michigan v. Chesternut*, 486 U.S. 567, 576, 100 L.Ed.2d 565, 108 S.Ct. 1975 (1988). When a person's "freedom of movement [is] restricted by a factor independent of police conduct – i.e., by his being a passenger on a bus . . . , the appropriate inquiry is whether a reasonable person would feel free to decline the officers' request or otherwise terminate the encounter." *Florida v. Bostick*, 501 U.S. 429, 436, 115 L.Ed.2d 389, 111 S.Ct. 2382 (1991).

Being an overnight guest in another's residence in the middle of the night is no different from being a passenger on a bus in terms of restricting one's freedom of movement independent of police activity. Leaving the house, as well as getting off the bus, would not be a voluntary choice. It is also patent that continuously knocking on a door while announcing that one is a sheriff's deputy and asking that the door be opened in the middle of the night for a space of five to six minutes would convey to any reasonable person that he or she is not free to decline the officer's request or otherwise terminate the encounter. Such police activity is intimidating as well as harassing. "'Consent' that is the product of official intimidation or harassment is not consent at all. Citizens do not forfeit their constitutional rights when they are coerced to comply with a request that they would prefer to refuse." *Bostick, supra,* 501 U.S. at 438. And as stated in *Schneckloth v. Bustamonte,* 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973), "the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed." *Id.,* 412 U.S. at 228.

Hence the findings by the Court of Appeal and the trial court that Deputy Gorton's actions in gaining entry at the front door were not overly intrusive, App. 4-5, 7, are in severe conflict with several of this Court's most prominent Fourth Amendment cases.

CONCLUSION

> It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.

– *Boyd v. United States,* 116 U.S. 616, 635, 6 S.Ct. 524, 29 L.Ed. 746 (1886). Since the California courts have not adhered to this caveat in the present case, it becomes this Court's duty to do so.

Respectfully submitted,

JOHN DOYLE
Attorney for Petitioner
Trevor James Patterson, II

2006 WL 3335126

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. TREVOR JAMES PATTERSON II, Defendant and Appellant.	A111868 (Contra Costa County Super. Ct. No. 05-031472-4) (Filed Nov. 17, 2006)

Appellant was convicted of manufacturing a controlled substance (Health & Saf. Code, § 11379.6, subd. (a)), possession of components used to manufacture methamphetamine (Health & Saf. Code, § 11383, subd. (c)(1)), and possession of hydriodic acid to manufacture methamphetamine (Health & Saf. Code, § 11383, subd. (c)(2)). He was sentenced to a three-year term for manufacturing a controlled substance. Sentencing on the other two convictions was stayed pursuant to Penal Code section 654.

Appellant challenges his convictions on the following grounds: (1) that the trial court erred in denying his motion to suppress, (2) that he was denied a fair trial due to a delay in filing the charges, (3) that the court improperly excluded evidence that a key witness had entered into an informant contract, and (4) that this witness's accomplice testimony was not sufficiently corroborated. We agree with appellant that the court erred in excluding evidence

of the witness's informant contract, however, we find that the error was harmless. In all other respects, we affirm.

BACKGROUND

I. Facts

At approximately 3:30 a.m. on May 15, 2001, sheriff's deputies received a dispatch reporting that gunshots had been fired outside of a multi-unit apartment building and that the shooter had come out of one of the lower apartment units. Deputy Goldberg met Sergeant Gorton and Deputy Simpson at the building. Only one apartment had its lights on. As the officers approached, Goldberg looked through a window into the apartment. The window was located on the side of the building about two feet from the front door, facing the parking lot. She was able to see inside the apartment by crouching down and looking through a two- or three-inch space between the blinds and the bottom of the window. She saw several people inside the apartment, along with what appeared to be chemicals, a bag of tablets, glassware, and a triple beam scale.

When Simpson and Gorton knocked on the front door and announced that they were from the sheriff's department, Goldberg observed that three of the occupants began hiding some items and moving other items towards the back bedroom of the apartment. She described her observations to Gorton, who continued knocking on the door. At trial, she identified appellant as one of the persons who moved items from the kitchen to a bedroom.

After five to six minutes of almost continuous knocking, Randy Barrett opened the inner door, which was located behind a locked metal security gate. He refused to allow the officers to enter the apartment without a search

warrant. The officers detected a strong chemical odor coming through the open door. Gorton recognized the smell as one associated with the manufacture of methamphetamine. The officers were also able to observe that one of the occupants was in a wheelchair. A few minutes later, Barrett's girlfriend, Corrine Smith, opened the security gate and Gorton and Simpson went inside. The officers immediately removed the occupants from the apartment and detained them.

Appellant's hands were chapped and stained with red and yellow colors at the time of his arrest. Goldberg testified that Smith told her appellant had brought red phosphorous, used in manufacturing methamphetamine, to the apartment that night. At the hearing on the motion to suppress, appellant testified that he was at the apartment because he'd had an argument with his girlfriend and Barrett had allowed him to stay overnight.

A search warrant was obtained and a subsequent investigation revealed that the apartment contained many of the chemical components involved in the manufacture of methamphetamine. There was also evidence of methamphetamine in various stages of the manufacturing process. A narcotics detective who was involved in the investigation testified that in his opinion the apartment was being used as a methamphetamine lab.

II. Proceedings in the Trial Court

The district attorney waited approximately two years after appellant's arrest before filing an information.[1] In the

[1] The record includes an information filed on August 14, 2003.

interim, appellant served a 16-month sentence on an unrelated charge. On May 23, 2002, he served the Contra Costa County District Attorney with a demand that he be brought to trial within 90 days pursuant to Penal Code section 1381. Before the preliminary hearing in this case, appellant filed a motion to dismiss on the grounds that the district attorney failed to comply with statutory deadlines and that the delay violated his right to due process. The motion was denied.

At the hearing, appellant moved to suppress all statements and physical evidence obtained as the result of the search of Barrett's apartment. After concluding that appellant had standing to bring the motion to suppress because he was Barrett's overnight guest, the trial court acknowledged that a warrantless search could not have been based solely on the initial report of shots fired. The court concluded, however, that the officers did not violate the Fourth Amendment because Smith voluntarily consented to their entry into the apartment and they had an objectively reasonable belief that she had the authority to give consent.

The court also determined that the officers did not engage in any impermissible conduct prior to obtaining entry. Noting that they were responding to a report of gunshots, the court found that the officers "had a right to be there and a right to attempt to contact persons in the area in response to the call that was made." The court further found that Goldberg's observations through the window were proper because they were made from a vantage point where she had a right to be.

As to the five to seven minutes that passed before Barrett opened the inner apartment door, the court found

that the officers "waited a reasonable amount of time" in obtaining a voluntary consent. The court also indicated that the entry could have been justified by the exigent circumstances facing the officers after they arrived, based on Goldberg's observations of possible contraband through the window and on the officers' legitimate concerns about the potentially explosive nature of chemicals used to manufacture methamphetamine. The motion to suppress was denied.

DISCUSSION

I. Motion to Suppress

Appellant contends the trial court erred in denying his motion to suppress the evidence obtained as a result of the search of Barrett's apartment. Appellant asserts that Barrett's opening of the apartment's inner door was involuntary, made in response to Sergeant Gorton's repeated demands, and that, until the front door was opened, the deputies were not aware of any circumstances that would excuse compliance with the warrant requirement. Appellant also contends that Goldberg invaded the occupants' reasonable expectation of privacy by looking through the window beneath the blinds.

Under the California Constitution, courts are precluded from ordering evidence excluded at trial "'for an unreasonable search and seizure unless that remedy is required by the federal Constitution as interpreted by the United States Supreme Court.' [Citation.]" (*People v. Camacho* (2000) 23 Cal.4th 824, 830, fn. omitted (*Camacho*).) On appeal from the denial of a suppression motion, "we review the evidence in a light favorable to the trial court's ruling, adopt those express and implied

findings of fact that are supported by substantial evidence, and independently determine whether those findings support the court's legal conclusion that the search was reasonable under the Fourth Amendment. [Citations.] The standard of review recognizes that it is the exclusive province of the trial court to make the factual findings and credibility determinations that support a ruling and the legal theory underlying it." (*People v. Hoeninghaus* (2004) 120 Cal.App.4th 1180, 1197-1198.)

Did the Officers Engage in Impermissible Conduct in Approaching the Residence?

Relying on *United States v. Jerez* (7th Cir. 1997) 108 F.3d 684 (*Jerez*), appellant contends that the officers' continuous knocking at the door amounted to an involuntary detention. We disagree.

An involuntary detention occurs "when 'taking into account all the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.' [Citation.] Although courts have recognized that nocturnal encounters with the police in a residence . . . should be examined with the greatest of caution . . . the operative test . . . is that a seizure occurs only when 'police conduct would have communicated to a reasonable person that the person was not free to decline the officers' requests or otherwise terminate the encounter.' [Citation.]" (*United States v. Cormier* (9th Cir. 2000) 220 F.3d 1103, 1110.)

In *Jerez,* the Seventh Circuit found an involuntary detention where officers knocked on the door of a motel room late at night for three minutes while demanding

entry, after which they knocked on a window for about two minutes while they shined a flashlight on the defendant as he lay in bed. (*Jerez, supra,* 108 F.3d 684, 692.) The lights in the motel room were not lit and the occupants were sleeping before the officers began knocking.

In finding that the officers' conduct amounted to an impermissible seizure, the court observed that "[b]ecause our law and legal traditions long have recognized the special vulnerability of those awakened in the night by a police intrusion at their dwelling place, our Fourth Amendment jurisprudence counsels that, when a knock at the door comes in the dead of night, the nature and effect of the intrusion into the privacy of the dwelling place must be examined with the greatest of caution." (*Jerez*, *supra*, 108 F.3d 684, 690.) The court also found that the officers impermissibly escalated the intrusion by knocking on the window and shining a light into the bedroom. (*Id.* at p. 692.)

The present case is distinguishable from *Jerez*. While both incidents occurred late at night, unlike the hotel room in *Jerez,* the lights in Barrett's apartment were on and all but one of the occupants were awake in the apartment. The only person who was sleeping was Smith. Another distinguishing fact is that the officers in this case did not escalate their activity. They continued knocking at the door for several minutes, but they did not engage in any further intrusive activity. While appellant alleged that one of the officers broke one of the back windows, this claim was not substantiated at the hearing on the suppression motion.

Appellant also contends that Goldberg violated the occupants' reasonable expectations of privacy by looking

through the window under the blinds, citing to *Camacho, supra.* We note that "[t]he Fourth Amendment protection of the home has never been extended to require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer's observations from a public vantage point where he has a right to be and which renders the activities clearly visible. [Citation.] 'What a person knowingly exposes to the public, even in his own home . . . , is not a subject of Fourth Amendment protection.' [Citation.]" (*California v. Ciraolo* (1986) 476 U.S. 207, 213; *Camacho, supra,* 23 Cal.4th 824, 832.)

In *Camacho,* the court held that the Fourth Amendment was violated when officers went into the private side yard of a home and observed the defendant through an uncovered window. (*Camacho, supra,* 23 Cal.4th 824, 837.) The court found that the officers did not have the right to enter the side yard and that the defendant had a reasonable expectation of privacy even though the window was uncovered. (*Id.* at p. 833.) But the *Camacho* majority emphasized that had other facts been present, such as a report of gunshots being fired, the trespass into the side yard might very well have been permissible. (*Id.* at p. 836.)

Camacho is distinguishable from the present case because that case involved a window located in an area that was clearly not intended to be accessible to members of the public. In contrast, the window at Barrett's apartment was located along a path that was accessible to the public and it was only a short distance away from the apartment's front door. Also, consistent with the qualification noted by the *Camacho* majority, the officers in this case were responding to a report that gunshots had been

fired. While Goldberg had to crouch down to see through the opening in the blinds, there was no evidence that she had to unduly contort her body to look through the window. The trial court correctly concluded that Goldberg had a right to be present where the window was located.[2]

Was the Warrantless Entry Justified by Exigent Circumstances?

Because this case involves a warrantless entry, the People have the burden to prove the entry was justified. (*People v. Hill* (1974) 12 Cal.3d 731, 753.) To meet this burden the Attorney General relies on the exigent circumstances exception to the warrant requirement. The California Supreme Court has defined "exigent circumstances" to include "an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property. . . ." (*People v. Ramey* (1976) 16 Cal.3d 263, 276.) The action must be "prompted by the motive of preserving life or property and [must] reasonably appear[] to the actor to be necessary for that purpose." (*People v. Roberts* (1956) 47 Cal.2d 374, 377.)

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[2] Appellant cites to *Lorenzana v. Superior Court* (1973) 9 Cal.3d 626, 636, for the proposition that apertures in a window do not dispel a reasonable expectation of privacy. As *Camacho* demonstrates, however, the size of the opening in the window is not determinative: "Although it is true the officer in *Lorenzana* was forced to peer through a small opening between the drawn curtains and the windowsill to observe the defendant's illegal activity, our decision in that case did not turn on the surreptitious nature of the officer's observation. Instead, *Lorenzana* identified a broader proposition: a warrantless search cannot be justified by police observations 'made from a position to which the officer has not been expressly or implicitly invited.' [Citation.]" (*Camacho, supra*, 23 Cal.4th 824, 833.)

Determining whether exigent circumstances justify a warrantless entry or search entails a factual inquiry into an officer's knowledge or belief and the action he or she took in response, followed by consideration of whether that action was reasonable under the circumstances. (*People v. Duncan* (1986) 42 Cal.3d 91, 97.) Generally, the reasonableness of an officer's conduct is dependent upon the existence of specific, articulable facts available at the time of the search or seizure that would warrant a person of reasonable caution in forming a belief that the action taken was appropriate. (*Id.* at pp. 97-98.) Due weight must be given to the reasonable inferences that an officer is entitled to draw from the facts in light of the officer's experience. (*Id.* at p. 98.)

The odors, which the officers recognized as being associated with the manufacture of methamphetamine, combined with Goldberg's observation of chemicals and other suspicious items along with the behavior of the occupants in attempting to hide these items after the officers began knocking, would have given the officers a reasonable suspicion that there was an active drug manufacturing lab inside the apartment.

As to the exigency, the officers testified that they were aware of the volatile nature of chemicals associated with the manufacture of methamphetamine. The officers reasonably determined that entry into the apartment was necessary for the safety of the occupants, one of whom was in a wheelchair, as well as others residing in the apartment building. Courts have recognized "[b]eyond a shadow of doubt, the presence of these chemicals in an unprofessional laboratory in a residential area constitutes an emergency which requires immediate and proper response by law enforcement." (*People v. Messina* (1985) 165

Cal.App.3d 937, 944.) The officers' actions were consistent with a motive of preserving life and property. They removed all the occupants from the unit and attempted to ventilate it by leaving the front door open. Accordingly, we find the warrantless entry of Barrett's apartment was justified by the exigent circumstances confronting the officers at that time.

The trial court concluded that the search was valid because Smith consented to entry by opening the security door and the officers were reasonable in believing that she had the authority to consent to a search. We need not evaluate the validity of her consent because even if her consent was invalid we have determined that by the time Barrett opened the inner door and the officers detected the chemical odors coming from inside of the apartment they already had reasonable suspicions of criminal activity as well as legitimate concerns regarding the potential for an explosion. The trial court did not err in denying appellant's motion to suppress.

II. Delay in Filing Charges

Appellant claims the trial court abused its discretion by denying his motion to dismiss on the grounds that preaccusation delay prevented him from receiving a fair trial. We disagree.

Delay in prosecution that occurs before the defendant is arrested or a complaint is filed can constitute the denial of due process of law under both the state and federal Constitutions. (*People v. Catlin* (2001) 26 Cal.4th 81, 107 (*Catlin*).) "A defendant seeking to dismiss a charge on this ground must demonstrate prejudice arising from the delay." (*Ibid.*) Prejudice will not be presumed from such

delay; it must be affirmatively shown. (*People v. Martinez* (2000) 22 Cal.4th 750, 769-770; *People v. Archerd* (1970) 3 Cal.3d 615, 640; *People v. Dunn-Gonzalez* (1996) 47 Cal.App.4th 899, 911; *People v. Butler* (1995) 36 Cal.App.4th 455, 467; *People v. Lawson* (1979) 94 Cal.App.3d 194, 198.) If the defendant demonstrates actual prejudice, then the prosecution is permitted to offer justification for the delay. (*Catlin, supra,* at p. 107.) It then becomes the trial court's duty to balance harm to the defendant against justification for the delay in deciding whether to dismiss the charge. (*Ibid.*)

The balancing process is the same under both the state and federal Constitutions. (*Catlin*, *supra*, 26 Cal.4th 81, 107.) However, the United States Constitution imposes an additional requirement: it must be shown that the delay was deliberately undertaken to gain a tactical advantage over the defendant. (*Ibid.*) But such a showing is not required to prevail on a motion to dismiss charges. (*Scherling v. Superior Court* (1978) 22 Cal.3d 493, 507.) Governmental negligence may be sufficient if an unjustified delay causes prejudice to the defendant. (*Ibid.*)

We turn to appellant's showing of prejudice. Prejudice may be shown by such things as the loss of material witnesses, loss of other evidence, and fading memories due to the lapse of time. (*Catlin*, *supra*, 26 Cal.4th 81, 107; *People v. Archerd, supra,* 3 Cal.3d 615, 640.) A showing of prejudice is not an all-or-nothing matter. Defendant should demonstrate both the fact and the extent to which he has been prejudiced by the lapse of time. The trial court's task of balancing the harm to defendant against justification for the delay cannot be performed in the abstract but rather requires consideration of the particular circumstances of the individual case. (See *People v.*

Frazer (1999) 21 Cal.4th 737, 775, overruled on another ground in *Stogner v. California* (2003) 539 U.S. 607, 610, 632-633.) Where, as here, appellant had a trial and we review a claim of unjustified preaccusation delay, it is appropriate to consider the evidence adduced at trial in determining whether defendant was in fact prejudiced by the delay. (*Archerd, supra,* at p. 641; *People v. Butler*, *supra*, 36 Cal.App.4th 455, 464.)

The trial court found that appellant's showing of prejudice was not sufficient to find a constitutional violation: "Defendant's showing of prejudice is insufficient based on self-serving statements about memory loss without any attempts at refreshing memory, speculation as to lost opportunities for concurrent time and non-specific attempts to find co-perpetrators two of whom were actually found and one who was not (and no indication as to whether the two found lack memory of what [happened)]."[3]

At the hearing on this motion, appellant's investigator was asked what the two found coperpetrators said regarding the extent of their recollection of the events that occurred on the night of the arrest. For example, the investigator was asked: "Was [Barrett] able to recall anything that was of substance in this case?" The court sustained the prosecution's hearsay objections to this line of questioning, stating: "Well, he's about to offer me the statement of somebody who's not here in court today for the truth of what the person is going to have said, to wit,

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[3] The court and the district attorney did take the loss of the opportunity for concurrent sentencing into account in computing appellant's sentence in this case.

he can't recall anything. That's a hearsay statement." Appellant asserts the court erred in not applying a hearsay exception.

We do not believe that the trial court erred in denying the motion to dismiss. The record does not demonstrate that appellant was prejudiced by the passage of time. While appellant's investigator testified that he was unable to locate one of the coperpetrators, we do not believe that this individual's testimony would have altered the outcome in this case.[4]

Nor do we find any error with respect to the trial court's ruling on the hearsay issue. "Hearsay evidence is evidence of a statement made out of court and offered to prove the truth of the matter stated. Unless it comes within one of the established exceptions to the *hearsay rule*, evidence of this type is inadmissible." (1 Witkin, Cal. Evidence (4th ed. 2000) Hearsay, § 1, p. 679, citing Evid. Code, § 1200.) We agree with the Attorney General that the testimony sought to be elicited was relevant only insofar as it was offered for the truth, namely, that the percipient witnesses could no longer recall the events leading up to appellant's arrest. The authorities cited by appellant regarding the "operative fact" exception to the hearsay rule concern the issue of consent and are inapposite.

And even if the court did err, there is nothing in the record to support appellant's position that the witnesses' memories had faded as a result of the delay. Smith testified

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[4] We note that it appears the investigator eventually was able to locate and interview the missing co-perpetrator, though it is unclear on the record when the interview occurred.

at appellant's trial and was able to recall the events in this case. For example, she remembered that on the night of the arrest she had gone to a local Target store to buy food for her cat. The police officers who were involved in appellant's arrest testified as well. Barrett testified that he did not recall many of the details surrounding the events of that night. It does not appear, however, that the passage of time caused his memory to dim as he repeatedly had difficulty recalling much more recent events, stating at one point: "To be fair I don't really remember what happened last week."

As we concur in the trial court's conclusion that defendant was not prejudiced by the delay, we need not determine whether the delay was justified.

III. Right of Confrontation and Cross-Examination

Appellant claims that the trial court erred in ruling that he was barred from asking Smith about an informant contract that she had entered into with the sheriff's department on the day after her arrest in this case. Prior to trial, Smith gave three statements in connection with this case, at least one of which appellant apparently sought to impeach by introducing evidence of this contract.

According to Detective Uyeda, Smith was told that if she were to supply information leading to three arrests, the current charge would not be prosecuted. He also told her that any information she provided on the current case would not fall within the terms of the informant contract. Smith provided information leading to arrests in two unrelated cases and she was informed in 2002 that no charges would be filed against her in the present case.

The court excluded evidence of the contract on the grounds that it was not relevant due its remoteness in time. The court also observed that the three statements were inconsistent, at times favoring appellant and at other times favoring the prosecution. The court noted that the two statements which she had provided to the public defender and to appellant's investigator were more favorable to the defense and were made after her portion of the contract was deemed satisfied by the district attorney. A subsequent statement, which appellant sought to impeach, was made approximately two years after the satisfaction of the contract and about a year after the last statement that she had given to appellant's investigator. The court excluded evidence of the informant contract, relying on Evidence Code 352.[5]

"The Confrontation Clause of the Sixth Amendment guarantees the right of an accused in a criminal prosecution 'to be confronted with the witnesses against him.' The right of confrontation . . . 'means more than being allowed to confront the witness physically.' [Citation.] Indeed, '"[t]he main and essential purpose of confrontation is *to secure for the opponent the opportunity of cross-examination.*"' [Citations.] Of particular relevance here, '[we] have recognized that the exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.' [Citations.] It does not follow, of course, that

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[5] "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Evid. Code § 352.)

the Confrontation Clause of the Sixth Amendment prevents a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness. On the contrary, trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678-679, emphasis in original.)

We agree with appellant that the court erred in excluding evidence of the contract. "As a general matter, a defendant is entitled to explore whether a witness has been offered any inducements or expects any benefits for his or her testimony, as such evidence is suggestive of bias." (*People v. Brown* (2003) 31 Cal.4th 518, 544.) Here, we see no compelling reason to justify excluding all evidence of Smith's informant contract. While the contract was no longer in force, we find it significant that it was entered into the day after Smith and appellant were arrested. Thus, while the contract's terms did not require her to testify regarding the present case, its connection to this case is manifest. And while Smith's statements to the various investigators were inconsistent with each other, rendering her testimony subject to impeachment on that basis alone, we believe evidence of the contract nevertheless was relevant to Smith's credibility. Additionally, we do not perceive that presentation of this evidence would have necessitated undue consumption of time or created a substantial danger of undue prejudice or confusion.

In determining whether the court's ruling requires reversal of the judgment, we apply a harmless error

analysis: "The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt." (*Delaware v. Van Arsdall*, *supra*, 475 U.S. 673, 684.) The court will examine factors such as: "[T]he importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." (*Ibid.*)

Here, Smith was a percipient witness in the case. Her testimony was highly relevant as it pertained to the night of the arrest as well as to events leading up to the arrest. Much of her testimony, however, was independently corroborated by the testimony of the officers who arrested appellant, by physical evidence obtained at the time of the arrest, and by the testimony of other officers regarding how methamphetamine is normally manufactured. Additionally, the defense was allowed to cross-examine Smith in all other relevant respects.

Moreover, the overall case against appellant was strong, given that he was arrested on the site of an active methamphetamine lab, that he was observed moving chemicals and/or equipment to the back of the apartment after the officers arrived, and that there was physical evidence on his hands and clothing indicating he had been actively participating in the manufacturing process. Based on the foregoing, we find that the error in omitting evidence of Smith's informant contract was harmless beyond a reasonable doubt.

IV. Corroboration of Accomplice Testimony

Appellant claims that Smith's accomplice testimony was not sufficiently corroborated in accordance with Penal Code section 1111.[6] He contends that the court thus erred in denying his motion for judgment of acquittal. We disagree.

Appellant moved for a judgment of acquittal pursuant to Penal Code section 1118.1[7] as to all counts at the close of the prosecution's case. The court denied the motion: "I find that [Smith's] testimony has been corroborated all over the place by the police, by their views, by their observations, by the things that were found at the house, the physical evidence alone, so that all taken together, I do find that there's substantial evidence of the existence of each element of each charge here."

"The law requiring corroboration of accomplice testimony is well established. . . .' "The requisite corroboration may be established entirely by circumstantial evidence. [Citations.] Such evidence 'may be slight and entitled to

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[6] Penal Code section 1111 provides: "A conviction cannot be had upon the testimony of an accomplice unless it be corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof. An accomplice is hereby defined as one who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given."

[7] Penal Code section 1118.1 provides, in part: "In a case tried before a jury, the court on motion of the defendant or on its own motion, at the close of the evidence on either side and before the case is submitted to the jury for decision, shall order the entry of a judgment of acquittal of one or more of the offenses charged in the accusatory pleading if the evidence then before the court is insufficient to sustain a conviction of such offense or offenses on appeal."

little consideration when standing alone. [Citations.]'"' [Citations.] '"Corroborating evidence 'must tend to implicate the defendant and therefore must relate to some act or fact which is an element of the crime but it is not necessary that the corroborative evidence be sufficient in itself to establish every element of the offense charged.' [Citation.]"' [Citations.] In this regard, 'the prosecution must produce independent evidence which, without aid or assistance from the testimony of the accomplice, tends to connect the defendant with the crime charged. [Citation.]' [Citation.] '"Corroborating evidence is sufficient if it substantiates enough of the accomplice's testimony to establish [her] credibility [citation omitted]."' [Citation.]" (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1128.)

As noted above, the evidence against appellant was strong. Appellant was present at the apartment while methamphetamine was being manufactured and the prosecution introduced other evidence of the charged offenses to independently corroborate Smith's testimony.

The judgment is affirmed.

Swager, J.

We concur:

Stein, Acting P.J.

Margulies, J.

Court of Appeal, First Appellate District,
Div. 1 – No. A111868
S149083

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

TREVOR JAMES PATTERSON II,
Defendant and Appellant.

Petition for review DENIED.

GEORGE
Chief Justice

IN THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

HONORABLE DIANA BECTON SMITH,
JUDGE, PRESIDING

DEPARTMENT 30

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. TREVOR JAMES PATTERSON II, Defendant.	)	No. 5-031472-4

REPORTER'S TRANSCRIPT OF 1538.5 MOTION

DECEMBER 7, 2004

A.F. BRAY BUILDING – MARTINEZ, CALIFORNIA

APPEARANCES

For the People: ROBERT J. KOCHLY,
DISTRICT ATTORNEY
BY: PATRICK VANIER
Deputy District Attorney
Contra Costa County

For the Defendant: LESLIE R. CHETTLE
Attorney at Law
1728 B Street
Hayward, California 94541

[25] DECEMBER 7, 2004 8:30 A.M.

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PROCEEDINGS

MR. VANIER: Line 11, Trevor Patterson, Docket No. 5-031472-4. The defendant appears out of custody Mr. Chettle representing Mr. Patterson.

Patrick Vanier for the People.

MR. CHETTLE: Good morning. Les Chettle for Mr. Patterson, who's present.

THE COURT: Good morning. This matter is on calendar today based upon the defense motion pursuant to Penal Code Section 1538.5.

* * *

[36] THE COURT: Okay. This is a warrantless search, so I take it the People would call the first witness.

MR. VANIER: There actually was a warrant with the exception of the initial entry.

THE COURT: The initial entry.

MR. CHETTLE: That's what we're contesting.

MR. VANIER: That evidence leads to the warrant, so.

THE COURT: Right.

MR. VANIER: People call Sergeant Gorton.

JOE GORTON

called as a witness, having been duly sworn, testified as follows:

* * *

[37] Q. Sergeant Gorton, you are a sworn peace officer with the Contra Costa County Sheriff's Department?

A. Yes, I am.

Q. How long have you been employed in that capacity?

A. Approximately 17 years.

Q. Directing your attention to May 15, 2001, at approximately 3:45 in the morning, did you have an opportunity to overhear a 911 dispatch call summoning officers to 4800 Blum Road –

A. Yes, I did.

Q. – Martinez? And what was the nature of that call?

A. A shots-fired call.

Q. Was there additional information with respect to that shots-fired call that you overheard?

A. Yes, there was.

Q. What other information did you become aware of?

A. The information was a Hispanic male had come out of a lower apartment and shot two times in the air with a handgun.

* * *

[39] Q. What, if anything, did you or your, colleagues do?

A. We surveyed the location. We listened outside the apartment. We also looked into a window which was facing the walkway.

Q. And was it you who looked through the window or was it another deputy?

A. Deputy Goldberg made observations. I could see through the window at times, but I was moving back and forth.

Q. Did Deputy Goldberg relay any information to you as to what she was able to see from her vantage point into the window?

A. She relayed that she was able to see what appeared to be glassware.

Q. Did she tell you if she saw anything else inside the apartment?

A. Subjects moving around, and I believe a chemical container.

Q. Is that significant to you in any way?

A. It was significant.

Q. Why was that significant to you?

A. When the terms "glassware" and "chemical containers" are brought up, my initial thought was there may be some sort of manufacturing process going on.

* * *

[40] Q. What, if anything, occurred?

A. As we knocked on the door, nobody answered, and Deputy Goldberg relayed to me that the subjects inside were now moving rapidly, scrambling.

* * *

[41] Q. What happened next once you knocked on the door?

A. There was no answer. We continued to knock on the door. At some point in time I remained at the door and Deputy Simpson went around to the rear of the apartment to attempt – we saw that or Deputy Goldberg relayed that subjects were running down the hall, so Deputy Simpson went around the back of the apartment to try and gain their attention.

* * *

As you were knocking on the door, were you also announcing your presence?

A. Yes.

* * *

[42] Q. As a law enforcement officer?

A. Yes, I was.

Q. And at some point in time after you knocked and announced your presence, did someone respond to your request and open the door?

A. Yes.

Q. And how soon after Deputy Simpson departed your area did somebody come to the front door?

A. I would say approximately five to six minutes.

* * *

[48] Q. When you arrived at the complex, did you have any other information that pointed to a certain apartment?

A. A specific apartment, no.

Q. The only other information you had regarding the shooter was that he was seen to go back into a lower unit?

A. Yes.

Q. When you surveyed the multi-unit complex, you noticed the lights of Apartment 3 were on?

A. Yes.

Q. And that was the only unit, as far as you could tell, that had the lights on?

A. That's correct.

Q. That's the only thing that drew your attention to that apartment, besides the comments about prior contacts?

A. Yes. That's correct.

Q. In other words, you had no specific information that the Hispanic shooter had gone into that apartment?

A. No.

Q. When you went to the window of that apartment, could you describe whether there were blinds behind the window?

[49] A. Yes. There were, I believe, the metal blinds, the metal venetian.

Q. Levelers?

A. Levelers, yes. I believe there was a sheer-type Curtain in front of those. Not towards the window, but on the other side of the blinds.

Q. All right. Were they closed?

A. The blinds?

Q. The blinds.

A. They were for the most part, I believe, closed. I mean there was some opening in them, but not directly open.

Q. All right. So to see into the unit, you mentioned that Deputy Goldberg was the first to look in the window?

A. I believe we – I saw in the window, facing the window, Deputy Goldberg was standing near, me. She actually squatted down and looked through an inch crack or two-inch crack towards the bottom where they hadn't gone down.

Q. So there was a small crack at the bottom of the window between where the Levelers had come to and where the bottom of the window was. So you had about a two-inch viewing space?

A. There was a two-inch viewing space at the bottom as well as being able to see a certain amount through the window itself.

Q. But you couldn't see glassware through the window?

A. No.

Q. So it's when she got down on her hands and knees that she was able to see glassware?

[50] A. Yes. I believe. You're going to have to ask her. I think that's when that happened.

Q. Now, the information that you got regarding the occupants of Apartment No. 3, did that information coincide with the possibility of a Hispanic male adult being one of the occupants?

A. I don't know who lived in Apartment No. 3, so I don't know.

Q. Well, I'm just concerned about on the way over you heard information.

A. Uh-huh.

Q. Did the deputy say, "The prior contacts I had were with somebody that fit that description of the shooter," the Hispanic male adult?

A. I don't believe so, no.

* * *

Q. Now, who first knocked on the door?

A. I believe Deputy Simpson did.

Q. You stated your purpose?

A. Yes.

Q. What did you say?

A. Well, we stated this was the Sheriff's office and [51] requested that somebody come to the door.

Q. You didn't say, "I'm here looking for the shooter"?

A. No.

Q. And there was no reply?

A. No.

Q. And when you did first make contact with Mr. Barrett, that was after approximately five to six minutes?

A. Yes.

Q. Of continuing knocking?

A. Yes. Almost continually.

* * *

[52] Q. And then when you gained entry, it was because the woman opened the door or unlocked the door?

A. That's correct. And opened the door.

Q. That woman, as best you can recall, was Corrine Smith?

A. Yes.

Q. Was Mr. Barrett present when she opened the door?

A. Yes.

Q. And it was against his wishes that she opened the door?

A. You will have to ask him.

Q. Well, he was still refusing?

A. He was refusing up until she opened the door.

* * *